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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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SECCURO EXAMINER

1SM2/0515

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ART UNIT	PAPER NUMBER
1505	9

DATE MAILED: 05/15/95

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 2-6-95 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. ☒ Notice of References Cited by Examiner, PTO-892.
2. ☐ Notice of Draftsman's Patent Drawing Review, PTO-948.
3. ☐ Notice of Art Cited by Applicant, PTO-1449.
4. ☐ Notice of Informal Patent Application, PTO-152.
5. ☐ Information on How to Effect Drawing Changes, PTO-1474..
6. ☐ _____.

Part II SUMMARY OF ACTION

1. ☒ Claims 1-3, 7, 8 & 11-16 are pending in the application.
   Of the above, claims 1-3, 11, 13 & 14 are withdrawn from consideration.
2. ☐ Claims _____ have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 6-8, 12, 15 and 16 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____. has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____ ; filed on _____.
13. ☐ Since this application apppears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
>
> Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 6-8, 12 and 15 rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103 as obvious over EP '734.

Claims 6-8, 12, 15 and 16 rejected under 35 U.S.C. § 103 as being unpatentable over EP '046 and WO '414, optionally further taken with EP '189.

The above references and rejections are discussed in the last office action which is incorporated by reference herein.

Applicant's arguments filed February 6, 1995 have been fully considered but they are not deemed to be persuasive.

That applicants claims recite a process for making a "polyolefin molding composition" is not seen to afford any patentable distinction over EP '734. Inherently the reference

compositions would be molding compositions, and it can hardly be urged that the use of PP compositions presently at hand for molding would be unobvious and afford any basis for patentable distinction.

Applicants at page 8 of the last response state "Secondly, it has long been known in the art that a mixture of at least two metallocenes gives polyolefins having different melting points (Specification, page 1, lines 30-32)".

Applicants then go on to urge that the difference in melting points (MPS) of the polymer components of at least 5°C as claimed distinguishes over EP '734. Looking to the Examples in EP '734, the particular Hf containing catalyst in ExB produced a polymer having a MP of 143°C and the particular Zr catalyst in ExD produced a polymer having a MP of 138°C, and since these same two catalyst were employed in Ex7, it would be reasonable to infer that a product having polymer components with a difference in MP°S of at least 5°C is obtained, especially in view of the above statement and admission made by applicants at page 8 of the last response. Though it would appear somewhat contrary to the above admission, applicants further contend that the results obtained by applicant are not expected in that the product does not have a mixed MP or a MP below the lower melting component, but it is not clear as to why applicants are obtaining their particular results. If the process are different it is not clear how the present claim language sets out process parameters or steps which point out the differences.

The products in Exs 4-7 of EP '734 do report a lower peak melting point, but the reference does not characterize the melting properties of the products in other ranges in the DSC spectrum. Further clarification by applicants so to why the melting behavior of their products are different would be helpful. Also applicants have not presented any evidence of criticality as to the claimed difference in MP°S of at least 5°C.

In regards to EP 046 and WO '414, those references do teach products having the same average mole wgts and different comonomer contents (EP '046 also mentions different MPS). As indicated in the last office action wherein the different comonomer contents would result in different MP°S. In this regard the Kaminsky*, Schlobohm- Morko Chem... publication, page 114, is cited as being of interest to support the Examiners position; it can be seen from Kaminsky that relatively small differences in comonomer content give raise to substantial differences in MP°. Considering that the references even contemplate blends of PE homopolymer with E copolymer, a difference in MP° of at least 5°C would appear to be within the scope of the references. Applicants have not shown any criticality for the claimed at least 5° difference in MPS, and moreover all of applicants ExS are to products containing propylene polymer while the claims are of a much broader scope including E polymers such as in the above references, and it is further questionable as to the

volability of e.g. E polymers for achieving applicants desired results. In regards to applicants claim 16 the reference polymers can have the same average mol. wgt. and the MWD is ≤ 3 for each polymer in the composition.

The following is a quotation of the first paragraph of 35 U.S.C. § 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C. § 112, first paragraph, as the specification as originally filed does not provide support for the invention as is now claimed. Applicants claim 16 recites a $M_w/M_n \leq 3$, but no lower limit is recited. From the Examples a lower limit of M_w/M_n of 2.0 is disclosed; absent a lower limit it is not clear that the claimed [redacted] range would have support (see In re Wertheim 191 USPQ .

Claim 16 rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification.

It is noted that in applicants specification, pages 4-7, it appears that the definition of the groups in the formulas are repeated in several instances'; applicants may wish to review the above pages to see if they read as desired.

Applicant's amendment necessitated the new grounds of

rejection. Accordingly, **THIS ACTION IS MADE FINAL.** See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

CSeccuro:evh
May 13, 1995
(703) 308-2351

Carman J. Seccuro

CARMAN J. SECCURO, JR.
PRIMARY EXAMINER
GROUP 150